

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4980 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

KOHYAJI RANCHHODJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR PS CHAMPANERI for Petitioners

MR SA PANDYA, AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 25/09/97

ORAL JUDGEMENT

Rule.

Mr.S.A.Pandya, learned Assistant Government Pleader waives notice of rule on behalf of the respondents. On the request of both the sides the matter is taken up for final hearing right today.

In the first instance an order was passed by the Competent Authority, Ahmedabad under Urban Land (Ceiling and Regulation) Act on 29.11.1990 declaring 20000 sq.mtrs. of the land of the petitioners to be an excess land. Against this order dated 29.11.1990 passed by the Competent Authority and Deputy Collector, Ahmedabad, the petitioner preferred Revision Petition under section 34 of the Act before the Government. This Revision Petition

was partly allowed by the Revenue Department vide its order dated 29.1.1993 declaring only 15336 sq.mtrs. to be in excess. In the meanwhile after passing of the Competent Authority's order dated 29.11.1990, the petitioners had moved an application dated 29.4.1991 seeking exemption under section 20. The document Annexure 'B' dated 15.5.1991 placed on record shows that such an application seeking exemption had been duly received by the Revenue Department. It is common case of the parties that this application of the petitioners seeking exemption under section 20 is still pending before the Government and no orders have been passed thereon sofar. On the basis of the order dated 29.1.1993 passed by the Revenue Department to which reference has been made hereinabove a notification dated 26.6.1996 was issued by the Competent Authority and the same was published in the gazette on 19.12.1996 and now a notice dated 2.5.1997 has also been issued by the Competent Authority for handing over possession of the land. At this stage the petitioners have come to challenge the order dated 29.1.1993 as also subsequent notification dated 26.6.1996 and the notice dated 2.5.1997. Needless to say that the basic order is the order passed by the Revenue Department on 29.1.1993 and the notification dated 26.6.1996 and the notice dated 2.5.1997 are only the natural consequences of the basic order dated 29.1.1993 which the petitioners have failed to challenge up till now.

Nevertheless the fact remains that the petitioners' application under section 20 seeking exemption is pending before the Government as has been agreed by learned Assistant Government Pleader also. In the facts and circumstances of this case, I find that the ends of justice will be served if the Government is directed to decide this way or that way the application dated 29.4.1991 which had been filed by the petitioners seeking exemption under section 20 of the Urban Land (Ceiling and Regulation) Act. Accordingly, this Special Civil Application is allowed in part and the concerned authorities and functionaries of the State of Gujarat are directed to decide the petitioners' application dated 29.4.1991 seeking exemption under section 20 of the Urban Land (Ceiling and Regulation) Act, within a period of three months from the date certified copy of this order is produced before the concerned authorities and till then the impugned order dated 29.1.1993 passed by the Revenue Department and the subsequent notification dated 26.6.1996 and the notice dated 2.5.1997 shall not be acted upon and given effect to. In case the petitioners' application under section 20 is rejected, the order dated 29.1.1993 shall be operative and the respondents shall be

free to proceed accordingly on the basis of the order dated 29.1.1993, notification dated 26.6.1996, and the notice dated 2.5.1997. In case the application for exemption under section 20 is allowed, all legal consequences shall follow. This Special Civil Application succeeds to this extent only and the rule is made absolute in the terms as aforesaid. No order as to costs.

m.m.bhatt